

**Amendments to the Drawings:**

The attached sheet of drawings includes new Figs. 5-7. In Figs. 5-7, previously omitted claimed features described in the written description have been depicted pursuant to the recommendations of the Examiner. Fig. 5-7 are top and cross-sectional views of a multi-compartment container made in accordance with the invention depicting ventable areas in alignment with each compartment. Applicant respectfully submits that no new matter has been entered.

Attachment: New Drawing Sheet depicting Figs. 5-7

## REMARKS

Claims 1-9, 11, 14-18, and 33-54 are pending in this application. The claims have not been amended since Applicant's last filing, and are listed for the convenience of the Examiner. Claims 10, 12, 13 and 19-32 were previously cancelled without prejudice, and claims 33-43 have been withdrawn in response to an earlier restriction requirement as noted by the Examiner. Applicant reserves the option to further prosecute the same or similar claims as originally presented at a later time.

### Objections

In the Final Office Action dated March 4, 2005, the Examiner objected to the drawings under 37 CFR 1.83(a), alleging that certain features of the claims were not specified in the drawings. In response, Applicant traversed the objection and submitted an amendment dated June 6, 2005 in which new Figs. 5-7 were added to illustrate the claimed elements pursuant to the recommendations of the Examiner, and the specification was amended as necessary to refer to new Figs. 5-7.

Thereafter, in the Advisory Action dated June 22, 2005, the Examiner notes that the amendment filed June 6, 2005, was not entered because the amendment allegedly contains new matter. Specifically, the Examiner alleges that the proposed amendments to the specification and new Figs. 5 -7 raise new matter because they were not previously presented in the original application. Applicant respectfully traverses.

Applicant acknowledges with appreciation the Examiner's courtesy in participating in a telephone interview with Applicant's Attorney on June 28, 2005. In accordance with Section 713.04 of the MPEP, Applicant sets forth the substance of the interview as follows.

During the interview, the Examiner and Applicant's attorney discussed the pending claims, prior art of record relied upon by the Examiner, and the Advisory Action. Also discussed was the Examiner's refusal to enter the Amendment After Final dated June 6, 2005, as set forth in the Advisory Action. No agreement was reached during this interview.

Pursuant to M.P.E.P. § 608.04, Applicant may rely on the specification, drawings and claims, as filed, in establishing a disclosure. Applicant respectfully submits that the new Figs. 5 - 7 merely depict graphically the features described verbally in the original disclosure. The amendment to the specification merely references the drawings in which these features are now

depicted. As such, any details or features depicted in these drawings that was not expressly described in the specification would have been inherent from the description or is well known in the art and further that the amendment and new figures do not contain new matter.

For the purpose of illustration and not limitation, new Figs. 5 - 7 show, *inter alia*, a compartmented container, in which each compartment has a ventable area 30. Figs. 5 - 7 further illustrate a ventable area 30 in sidewall 26. Indeed, support for these features, i.e., a compartmented container and a ventable area located in the sidewall, is found in the disclosure, as originally filed. In particular, the specification, recites that "[t]he plurality of ventable areas may be located in different areas of the lid than depicted in FIGs. 1 and 2, including the sidewalls 26 of the lid 14 and other locations of the top wall 24 of the lid 14." (See Specification, at page 7, lines 15 to 17). Figure 5, 6, and 7 illustrate ventable areas 30 in sidewall 26. The specification also recites that "[i]t is also contemplated that if a compartmented container is used, then at least one ventable area may be located over certain foods. Thus, if a certain food in one compartment is the only one to be vented, then the ventable area located nearest to this compartment is opened, while the remaining ones of the ventable areas remain closed." (See Specification, page 7, lines 21-25). Figures 5, 6, and 7, each illustrate a compartmented container in which each compartment includes a ventable area 30.

As the original specification expressly recites that the container may be a compartmented container, and further that the ventable areas may be located in a sidewall, Applicant respectfully submits that new Figs. 5-7 do not contain any matter that was not originally present in the specification, as filed.

Additionally, as the specification is necessarily amended to reference and briefly describe new Figs. 5 - 7, no new matter has been introduced by the amended specification. Accordingly, the specification expressly recites sufficient disclosure for the features illustrated in new Figs. 5-7, and no new matter has been introduced. Applicant respectfully requests that the objections to the amended specification and Figs. 5-7 be withdrawn.

In the event that the Examiner maintains that Figs. 5 - 7 introduce new matter, Applicant submits that Figs. 5-7 are not necessary for the understanding of the claims, and further that the pending claims are supported by the specification and drawings, as originally filed. Hence, the objection to the drawings under 37 C.F.R. 1.83(a) is respectfully traversed.

As noted above, in the Final Office Action, the Examiner objected to the original drawings (Figs. 1-4) alleging that the drawings did not show every feature of the invention specified in the claims. The Examiner further requested corrected drawings to illustrate various features of claims 44, 53, and 54. In particular, the Examiner requested that the following features be shown in the drawings, "ventable area formed in the sidewall;" "plurality of compartments;" "at least one ventable area aligned with at least one of the plurality of compartments;" and "at least one ventable area aligned with each compartment."

Pursuant to M.P.E.P. § 608.02, a drawing is only required to be furnished when necessary for the understanding of the subject matter to be patented. Applicant respectfully submits that the original specification is sufficiently detailed for one of ordinary skill in the art to understand the subject matter to be patented. Hence, new Figs. 5-7, which illustrate the features noted by the Examiner, are not necessary for the understanding of the subject matter the pending claims. Accordingly, Applicant respectfully requests that Examiner's objection to the drawings be withdrawn.

Applicant submits that one skilled in the art would not require drawings, which illustrate (a) a ventable area formed in the sidewall; (b) a plurality of compartments; (c) at least one ventable area aligned with at least one of the plurality of compartments; and/or (d) at least one ventable area aligned with each compartment to understand the subject matter of the pending claims. As previously noted, each of these features are described on page 7 of the original specification. The specification further states with reference to Figs. 1-4, that the "shape of the container may vary from that shown without departing from the scope of the invention." The specification also notes that "it is contemplated that shapes like oval, circular, and other polygonal and non-polygonal shapes may be used." See Specification at page 4 lines 12-17. Further, compartmented containers are known in the art. For the purpose of illustration, US Des. 427,525 and US Des. 388,703, which are also owned by Applicant, each disclose a food container having multiple compartments. Additionally, the term "sidewall" is clear and understood by one skilled in the art, therefore, the feature of "a ventable area in the sidewall" would not necessitate a drawing for one skilled in the art to understand the subject matter of the pending claims. Accordingly, Applicant respectfully requests that the objection to the original drawings as noted in the Final Office Action be withdrawn.

Claim Rejections

35 U.S.C. §§ 112, ¶ 1

In the Final Office Action, the Examiner rejected claims 1-9, 11, 14-18 and 44-54 under 35 U.S.C. § 112, first paragraph as allegedly failing to comply with the written description requirement. Specifically, with regard to claim 1, the Examiner has alleged that the language “a second interruption spaced substantially from the first interruption” is not supported by the specification. The Examiner has further alleged that, with regard to claim 44, the language “at least one ventable area is formed in the second side wall” is not supported by the specification. Finally, the Examiner has alleged that the language “at least one ventable area aligned with at least one of the plurality of compartments” (claim 53), and “at least one ventable area is aligned with each compartment” (claim 54) is not supported by the specification. Applicant respectfully traverses these rejections.

Ample support exists in the written description of the specification to support the claim language “a second interruption spaced substantially from the first interruption.” For purposes of illustration and not limitation, the specification at page 6, lines 3-10 as originally filed describes an embodiment made in accordance with this claim language. Furthermore, and as depicted in Fig. 2, a “ventable area” (e.g., 30) is defined by two “cuts” (e.g., sides 30(c) and 30(a)). These two “cuts” are separated by a “first interruption,” such as the area between ends 30(d) and 30(e) that can form a hinge (page 6, lines 32-33), and a “second interruption”, such as 30(g) clearly depicted in Figs. 2 and 3. As can be seen in this exemplary embodiment, the “second interruption” is clearly “spaced substantially from the first interruption.” To expedite allowance of this application, however, Applicant has amended the specification in accordance with the drawings and claims. Care has been taken to ensure that no new matter has been added.

Applicant also respectfully submits that support exists for the language in claim 44 requiring “at least one ventable area is formed in the second side wall.” For purposes of illustration and not limitation, as embodied in the specification at page 7, lines 15-16, “[t]he plurality of ventable areas may be located in different areas on the lid than depicted in Figs 1 and 2, including the sidewalls 26 of the lid 14....” Thus, this claim element is clearly supported by the written description.

Moreover, the language “at least one ventable area aligned with at least one of the plurality of compartments” (claim 53), and “at least one ventable area is aligned with each

compartment" (claim 54) is also supported by the written description. For purposes of illustration and not limitation, at page 7, lines 21-15, the specification states:

It is also contemplated that if a compartmented container is used, then at least one ventable area may be located over certain foods. Thus, if a certain food in one of the compartments is the only one to be vented, then the ventable area located nearest to this compartment is opened, while the remaining ones of the ventable areas remain closed.

Thus, the claim elements present in dependent claims 53 and 54 are clearly supported by the written description of the specification.

Applicant respectfully requests that the rejection under 35 U.S.C. § 112 ¶1 be withdrawn in light of the above remarks.

35 U.S.C. §§ 112, ¶2

In the Office Action, the Examiner rejected claims 1-9, 11, 14-18 and 44-54 under 35 U.S.C. § 112, second paragraph as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter Applicant regards as the invention. Specifically, the Examiner has alleged that "it is unclear what is required" by "a cut including a first interruption and a second interruption." Applicant respectfully traverses the rejection.

For the reasons set forth above, Applicant respectfully submits that "a cut including a first interruption and a second interruption" is clearly defined and supported by the specification. Applicant thus respectfully requests that the rejection under 35 U.S.C. § 112 ¶2 be withdrawn.

35 U.S.C. §§ 102(b), 103(a)

In the Office Action, the Examiner also rejected claims 1-9, 11, 14, 16-18, 45, 46 and 51 under 35 U.S.C. §§ 102(b) as allegedly being anticipated by U.S. Patent No. 3,955,710 to Comisso (hereinafter, "Comisso"). The Examiner further rejected claims 1-9, 11, 14, 16-18 and 45-51 under 35 U.S.C. § 103(a) as allegedly being obvious over Comisso in view of U.S. Patent No. 5,613,619 to van Melle. (hereinafter, "van Melle"). The Examiner also rejected claims 1-9, 11, 14-18 and 45-51 as allegedly being obvious over U.S. Patent No. 3,851,789 to Case et al. (hereinafter, "Case et al.") in view of Comisso and van Melle. The Examiner also rejected claims 53 and 54 as allegedly being obvious over Case et al. in view of Comisso and van Melle and in further view of U.S. Patent No. 5,906,292 to Rider, Jr. (hereinafter, "Rider, Jr."). Applicant respectfully traverses each of these rejections.

Independent claim 1 of the present application is directed to an optional venting container. The container comprises a base and a lid releasably latched to the base, with at least one ventable area formed therein. The ventable area has a perimeter defined by a cut including a first interruption defining a hinge portion and a second interruption spaced substantially from the first interruption to define a frangible portion. The ventable area is adapted to form a vent by applying pressure within the perimeter to rupture the frangible portion. For purposes of illustration and not limitation, Figure 2 of the present application discloses a representative embodiment of an optional venting container (10) including at least one ventable area (30) including perimeter (30a-c) defined by a cut, which includes a first interruption to define hinge portion (e.g., between 30d and 30e) and a second interruption substantially spaced from the first interruption to define a frangible portion (30g).

In contrast to Applicant's invention as claimed in claim 1, neither Commisso, Case et al., van Melle nor Rider, Jr. disclose, among other things, an optional venting container having at least one ventable area defined by a "cut including a first interruption defining a hinge portion and a second interruption spaced substantially from the first interruption to define a frangible portion, the ventable area being adapted to form a vent by applying pressure within the perimeter to rupture the frangible portion." Indeed, and as recognized by the Examiner, Case et al. does not even disclose a container having a ventable area. Rider, Jr. similarly does not disclose a container having a ventable area. Commisso, on the other hand, simply discloses a container having finger apertures. The finger apertures 15 depicted in the figures of Commisso are formed by a continuous radial cut 18 extending from (and in fact beyond) one side of hinge 17 to the other side of hinge 17. Although Commisso does suggest that a series of perforations can be used in place of the radial cut (col. 2, lines 16-22), there is no disclosure or suggestion by Commisso of a ventable area defined by a "cut including a first interruption defining a hinge portion and a second interruption spaced substantially from the first interruption to define a frangible portion, the ventable area being adapted to form a vent by applying pressure within the perimeter to rupture the frangible portion." As previously noted, the perforations of Commisso do not define a hinge as claimed. Furthermore, the closely spaced perforations of Commisso are not "spaced substantially" from one another. Van Melle does not remedy the deficiencies of Commisso, Rider, Jr. or Case et al. Specifically, van Melle merely discloses a foldback cup lid wherein "foldback portion 20" is folded back by tearing lid along tear lines 37 and 39.

Furthermore, there is no suggestion or motivation provided by the prior art of record to combine the finger openings of Commisso with the container of Case et al.

Hence, the prior art of record, individually and in combination, does not disclose or suggest the optional venting container as recited in amended claim 1 of the present application. Independent claim 1, and claims 2-9, 11, 14-18 and 44-54 depending therefrom, are allowable over the prior art of record.

Moreover, dependent claims 2-9, 11, 14-18 and 44-54 are further allowable for reciting additional features not disclosed by the prior art relied upon by the Examiner.

For example, dependent claims 2 and 3 further recite the material of construction of the base and the lid of the container. Dependent claims 4-8 and 14-18, further specify the configuration and shape of the container, as well as the number and locations of the ventable areas. Dependent claims 9, 11 and 14 are directed to the configuration of the ventable area.

Similarly, dependent claims 44-54 also recite patentable subject matter not disclosed or suggested by Commisso or Case et al. For example, newly added dependent Claim 44 recites that the at least one ventable area is formed in the sidewall of the lid. Dependent claim 45 further states that the cut portion defines only one frangible portion, and claim 46 depending therefrom recites that the frangible portion is disposed opposite the hinge portion. Dependent claims 47-51 specify the depth of the cut defined along the perimeter of the ventable area. Dependent claims 52-54 recite the location of the ventable areas relative claimed aspects of the container.

None of the prior art of record, individually or in combination, discloses or suggests an optional venting container have each and every feature as claimed. Thus, at least for these reasons, dependent claims 2-9, 11, 14-18 and 44-54 are further allowable over the prior art relied upon by the Examiner.

Formal Request for Interview

Applicant respectfully requests an interview with the Examiner to discuss the present application and the prior art of record. Applicant's Attorney Daniel Hulseberg may be reached at telephone number (212) 294-3310 to schedule a mutually convenient date and time and to provide assistance or additional information as required.

## CONCLUSION

On the basis of the foregoing Amendment and Remarks, Applicant respectfully submits that the pending claims of the present application are allowable over the prior art of record. Applicant thus respectfully requests that the previous rejections be withdrawn, and that claims 1-9, 11, 14-18 and 44-54 be allowed by the Examiner. Favorable consideration and timely allowance of this application are respectfully requested.

Applicant authorizes the Commissioner to charge any additional fees and/or credit any overpayments associated with this paper to Winston & Strawn Deposit Account No. 50-1814, Ref. No. 86012-36400-USPT. Further, if a fee is required for an extension of time under 37 C.F.R. § 1.136 not provided for above, Applicant requests such extension and authorizes the charging of the extension fee to Winston & Strawn Deposit Account No. 50-1814, Ref. No. 86012-36400-USPT.

Respectfully submitted,

Date: August 4, 2005

  
\_\_\_\_\_  
Lisa A. Chiarini (Reg. No. 50,932)  
for Daniel J. Hulseberg (Reg. No. 36,554)

**WINSTON & STRAWN LLP  
CUSTOMER NO. 28763  
(212) 294-5331**

Attachment